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PEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 Mail 3 1 1994

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In the Matter of

Implementation of Section 309(j) of the Communications Act Competitive Bidding Treatment of Designated Entities

PP Docket No. 93-253

ORIGINAL FILDER

DOCKET FILE COPY OF GIVAL

To: The Secretary

EX PARTE PRESENTATION

MasTec, Inc. submits an original plus one copy of this memo and the attached letter (sent ex parte to Commissioner James H. Quello) for inclusion in the record of the above-referenced rule making proceeding.

Respectfully submitted,

Matthew L. Leibowitz
Counsel for MasTec, Inc.

May 27, 1994

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No. of Copies rec'd

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May 27, 1994

Via Facsimile (202) 632-0163

The Honorable James H. Quello Commissioner Federal Communications Commission 1919 M Street, NW Room 802 Washington, DC 20554

Re: Personal Communications Services

Dear Commissioner Quello:

On Tuesday, May 31, 1994, I am meeting with Commissioner Ness and Commissioner Chong to discuss minorities' and women's participation in PCS. In addition, I have a meeting on Wednesday, June 1st, at 8:00 a.m. with Rudy Baca of your Office. If at all possible, I would like to meet with you on Tuesday or early Wednesday morning to express our concerns about recent reports that the FCC may not adopt critical mechanisms which are necessary to implement the statutory requirement of Section 309 (j) (4) (D) of the Communications Act.

We believe PCS will create an historic and unique opportunity to expand the ownership and control of our telecommunications industry to include minorities and women. However, in order for minorities and women to play a meaningful role in PCS, and to raise the requisite capital to compete in the PCS marketplace, the Federal Communications Commission must implement a multi-level flexible approach including a 30 MHz set-aside on the MTA basis, installment payments and tax certificates.

I am attaching to this letter a generic financial cost analysis of constructing a PCS for Miami. Please note that this cost analysis does not include the price of the acquisition of

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Page 2

the frequencies through the auction process or any operating costs. While the analysis was done for the Miami MTA and inclusive BTAs, we believe it is a fair generic representation of most major markets around the country. As you will note, the analysis includes the following variables: a 30 MHz system, a 20 MHz system and a 10 MHz system. In addition thereto, each frequency block is then divided into the Miami MTA and the major BTAs that are included with the MTA (but not all of the BTAs).

The significant conclusion that can be drawn from this analysis is that the cost of construction alone even for the smallest alternative, i.e., a 10 MHz block on the Miami BTA basis, is in excess of \$33,000,000. I think it is fair to state that this will exceed the financial capacity of any Designated Entity that is interested in pursuing participation of PCS in While it is true that the cost for the smaller BTAs are significantly less, such as a system in Fort Pierce which would only cost a little over \$3,000,000, but when viewed on a potential subscriber basis as a stand alone operation, this is simply an invitation for economic disaster. Thus, one must fairly conclude that the operating assumption by some Designated Entities that they want the FCC to establish the smallest possible set-aside to ensure their ability to independently own and operate a PCS system is simply not economically feasible. Furthermore, I believe that any PCS system without at least approximately 30 MHz of spectrum will be difficult to finance.

I would also like to advise you that in light of the recent concerns that have been expressed by the FCC staff on the constitutionality of set-asides, we are in the process of preparing an updated constitutional legal Memorandum discussing the constitutionality of set-asides. This Memorandum is being prepared by Arthur England who is the former Chief Justice of the Florida Supreme Court. A copy of the Memorandum will be forwarded to you within the next few days.

In this context, it is critical that the FCC focus on the evaluation of whether or not any bidding credit is economically the functional equivalent of a set-aside. We strongly believe that the answer is no. This belief is supported by the fact that it is overwhelmingly likely that the major telecommunications entities in this country, including MCI, Sprint, and the various Bell operating companies, will overbid the value of the frequencies due to their own strategic needs. Thus, just as we saw in the Paramount acquisition, the real market value and the ultimate acquisition cost will vary significantly. While it is

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Page 3

true that Paramount represented the last major studio available, it is also true that neither Mr. Diller nor Viacom required Paramount for economical survival. This is not the case when it comes to PCS. Most Bell operating companies and long distance carriers view PCS as critical to their economic survival. Thus, not only will they overbid the fair market value, as was the case in Paramount, but I think it is safe to say that when it comes to survival they will bet the ranch, if necessary. Accordingly, it is simply impossible to, at this stage, estimate what a necessary bidding credit will be in order to overcome the anticipated economic survival overbidding. Thus, bidding credits are simply not the functional equivalent of set-asides. As a result, bidding credits cannot fulfill the Congressional mandate to ensure that Designated Entities participate in PCS.

I will call your office on Tuesday morning to see if a meeting is possible.

Pursuant to FCC rules and regulations, I will file with the Office of the Secretary an appropriate Ex Parte Memorandum of this letter.

Sincerely yours,

Matthew L. Leibowitz
Counsel for MasTec, Inc.

MLL/mdr

Enclosure

cc: Rudolfo M. Baca, Esq., Legal Advisor Jorge Mas Canosa, MasTec, Inc.

	M'	TA VS BTA CO	ets			
		CDMA	}			
		30MHz				
						I
	Miami MTA	Miami BTA	Ft Myers	Ft Pierce	Naples	West Palm
Sites	215	121	20	11	16	46
Base	21800000	12100000	2000bto	1100000	1600000	4800000
Year 1	17550000	9450000	1800000	975000	1500000	3825000
Year 2		0	100000		100000	33333
Year 3		75000			****	
Year 4		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,				
Year 5	6626000	4650000	228600	525000	75000	1350000
Year 6	4675000	2700000	150600	150000	525000	1350000
Year 7	2778000	1728000	300000	75000	150000	525000
Year 8	4205000	2628000	30000	375000	75000	825000
Year 9	40,600,00	2628000	225600	450000	75000	679000
Year 10	4200000	2475000	150000	225000	300000	1050000
Eq Total	\$65,975,000	\$38,425,000	\$5,150,000	\$3,875,000	\$4,300,000	\$14,200,000
Site Const	9675000	5445000	900000	495000	720000	2070000
GILE COINE	30,3000	343000	300000	70000	12000	20.000
Towers	2840500	1703000	230750	123500	188500	588000
Transmission	4300000	2420000	400000	220000	320000	920000
Shelters	1810000	801250	201250	115000	182500	315000
			0.40000	400000	400000	
Engineering	2580000	1452000	240000	132000	192000	552000
Site Total	\$21,005,500	\$11,821,250	\$1,972,000	\$1,085,500	\$1,583,000	\$4,442,000
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Year 6	1723550	1200000		150000	75000	300000
Year 7		120000	150000	75000		525000
Year 8	25000	1650000		375000	75000	450000
Year 9	2778000	1575000	75000		225000	900000
Year 10	1875000	1050000	75000	75000	225000	450000
Eq Total	\$51,128,000	\$28,195,000	\$4,175,000	\$2,750,000	\$3,700,000	\$11,125,000
Site Const	9675000	5445000	900000	495000	720000	2070000
Towers	2840500	1703000	230750	123500	188500	585000
Transmission	4300000	2420000	400000	220000	320000	920000
Shelters	1610000	801250	201250	115000	162500	315000
Engineering	2500000	1452000	240000	132000	192000	552000
Site Total	\$21,006,500	\$11,821,250	\$1,972,000	\$1,085,500	\$1,583,000	\$4,442,000
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	30 MHz	20 MHz	20 MHz	20 MHz	20 MHz	20 MHz
		10 MHz	10 MHz	10 MHz	10 MHz	10 MHz
Year 1	4307	1434	147	99	39	433
		598	61	41	16	181
Year 2	10231	3378	356	241	95	1043
104112	10401	1407	140	101	40	435
	 	1407	,	101		100
Year 3	34303	11225	1230	826	329	3541
		4677	512	344	137	1475
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Year 4	69612	22575	26\$5	1712	380	7275
		9400	1066	714	287	3031
Year 5	128190	40550	4741	3170	1284	13350
		16896	1975	1321	5 35	5562
Year 6	183460	58405	70\$4	4705	1922	19843
		24335	2510	1981_	801	8185
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Year 7	213660	67375	8408	5594	2303	23150
		28073	3503	2331	980	9846
	242242			0.00	20.00	26949
Year 8	240346	75050	9678	6423	2665	10978
		31275	4032	2676	1111	10070
Year 9	264391	81757	10692	7211	3016	29319
Teal	201391	34000	4638	3005	1257	12216
		37050	7000	3008	1231	12410
Year 10	290235	88952	12232	8077	3405	32552
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